

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RAUL GARCIA,

Petitioner,

v.

TIM GARRETT, *et al.*,

Respondents.

Case No. 3:22-cv-00332-ART-CSD

ORDER

Petitioner Raul Garcia (“Petitioner”) filed a *pro se* federal habeas corpus petition under 28 U.S.C. § 2254 (ECF No. 1-1). This matter is before the Court for initial review under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts and for consideration of Petitioner’s application for leave to proceed *in forma pauperis* (ECF No. 1) and motion for appointment of counsel (ECF No. 1-2).

The Court finds Petitioner is unable to pay the filing fee. Accordingly, the application for leave to proceed *in forma pauperis* will be granted, and Petitioner is not required to pay the filing fee.

There is no constitutional right to appointed counsel in a federal habeas corpus proceeding. *Luna v. Kernan*, 784 F.3d 640, 642 (9th Cir. 2015) (citing *Lawrence v. Florida*, 549 U.S. 327, 336–37 (2007)). An indigent petitioner may request appointed counsel to pursue habeas relief. 18 U.S.C. § 3006A(a)(2)(B). The decision to appoint counsel is generally discretionary. *Id.* § 3006A(a)(2) (authorizing appointment of counsel “when the interests of justice so require”). However, counsel must be appointed if the complexities of the case are such that denial of counsel would amount to a denial of due process, and where the petitioner is so uneducated that he is incapable of fairly presenting his claims. *LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987); *Brown v. United States*, 623

1 F.2d 54, 61 (9th Cir. 1980).

2 The Court finds Petitioner is unable able to afford counsel and the
3 appointment of counsel is justified based on the lengthy sentence structure and
4 the complexity of the potential procedural obstacles presented by the petition.
5 See ECF No. 1-1. The Court will therefore grant Petitioner's motion for
6 appointment of counsel.

7 IT IS THEREFORE ORDERED that the Clerk of the Court file the petition.

8 IT FURTHER IS ORDERED that Petitioner's motion for appointment of
9 counsel (ECF No. 1-2) is GRANTED. The Federal Public Defender is provisionally
10 appointed to represent petitioner in all proceedings related to this matter,
11 including any appeals or certiorari proceedings, unless allowed to withdraw.

12 IT FURTHER IS ORDERED that the Federal Public Defender must, within
13 30 days from the date that this order is entered, undertake direct representation
14 of Petitioner or indicate to the Court the inability to represent Petitioner in these
15 proceedings. If the Federal Public Defender is unable to represent Petitioner, then
16 the court will appoint alternate counsel.

17 IT FURTHER IS ORDERED that neither the foregoing deadline nor any
18 extension thereof signifies or will signify any implied finding of a basis for tolling
19 during the time period established. At all times, Petitioner remains responsible
20 for calculating the running of the federal limitation period under 28 U.S.C. §
21 2254(d)(1) and timely asserting claims. That is, by setting a deadline to amend
22 the petition and/or by granting any extension thereof, the Court makes no finding
23 or representation that the petition, any amendments thereto, and/or any claims
24 contained therein are not subject to dismissal as untimely. *See Sossa v. Diaz*,
25 729 F.3d 1225, 1235 (9th Cir. 2013);

26 IT FURTHER IS ORDERED that the Clerk of the Court add Aaron D. Ford,
27 Attorney General for the State of Nevada, as counsel for Respondents, and
28 electronically provide Respondents' counsel with a copy of this order and copies

1 with all items previously filed in this case by regenerating the Notices of Electronic
2 Filing.

3 IT FURTHER IS ORDERED that Respondents' counsel must enter a notice
4 of appearance within 20 days of entry of this order, but no further responses will
5 be required from Respondents until further order of the Court.

6 IT FURTHER IS ORDERED that, notwithstanding Local Rule LR IC 2-2A(g)
7 paper copies of any electronically filed exhibits need not be provided to chambers
8 or to the staff attorney, unless later directed by the Court.

9 IT FURTHER IS ORDERED that the Clerk of the Court shall send a copy of
10 this order to Petitioner and the CJA Coordinator for this Division and a copy of
11 the petition and this order to the Federal Public Defender.

12 DATED THIS 29th day of August 2022.

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15 ANNE R. TRAUM
16 UNITED STATES DISTRICT JUDGE
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